IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/10/2002

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Criminal Appeal No.855 of 1997

N.J.Suraj .. Appellant

-vs-

State rep. by Inpsector
of Police,Kattoor Police
Station, Coimbatore. .. Respondent

Appeal against the judgment of the learned Principal Sessions Judge, Coimbatore, made in S.C.No.180 of 1996 dated 16.10.1997.

!For Appellant : Mr.V.Gopinath, S.C.,
for Mr.K.Selvarangan

^For Respondent : Mr.V.M.R.Rajendran
Addl. Public Prosecutor.

:J U D G M E N T

(Judgment of the Court was delivered by N.DHINAKAR, J.)

The sole appellant, who, in the judgment, will be referred to as 'the accused', was tried before the learned Principal Sessions Judge, in Sessions Case No.180 of 1996, on a charge of murder on an allegation that at about 2.00 or 2.30 a.m. on 23.3.94, he caused the death of Shali, his wife, by smothering and by causing asphyxia. He was also charged under Section 201 I.P.C. on an allegation that after causing the murder of Shali, he attempted to screen the offence by leaving a suicide note at the scene, as if, it was written by the deceased Shali. The learned trial judge convicted and sentenced him to two years rigorous imprisonment for the said offence under Section 201 I.P.C. while convicting and sentencing him to imprisonment for life for the offence of murder. Hence, the appeal.

2. Shorn of unnecessary details, the facts necessary to dispose of the appeal can be briefly summarised as follows:-

The deceased is the daughter of P.W.7. The accused was running a printing press under the name and style of Prompt Printers at Tirussur in Kerala. The deceased was staying with her father at Paliseri Village near Tirussur and was employed in the printing press of the accused. P.W.7 was a tailor by profession. The deceased studied up to 1 0th standard. She fell in love with the accused and wanted to marry him. Accordingly, on 19.3.94, she married him and the marriage was registered at the Office of the Sub Registrar, Tirussur. Ex.P.6 is the certificate issued by the Sub Registrar, showing the marriage between the accused and the deceased. The said fact was not known to the parents of the deceased and the parents of the accused were against the marriage and therefore, wanted the said marriage to be annulled. It is the further case of the prosecution that on 22.3.94, Ex.P.7 was registered at the same office annulling the said marriage, though the said deed was not signed nor was it presented for registration by the deceased and it was presented on behalf of the accused. On 22.3.9 4, the deceased left her house, carrying with her a tiffin box, M.O.1 1, after informing her father that she is going to Prompt Printers for her job. She was not seen alive thereafter by P.W.7. At about 6.3 0 p.m. on 22.3.94, the deceased and the accused went to Chitra Lodge at Coimbatore, where P.Ws.1 and 4 were working as receptionist and room boy respectively and asked for a double bed room after intimating P.W.1 that he and the deceased are husband and wife. The accused has stated that his wife had to attend an interview on the next day and therefore, they had to stay in the lodge for the night. P.W.1 obtained Rs.120/- from the accused and allotted room No.59. The accused made entries in the Check-in register, Ex.P.1 and the said entries are Ex.P.2. He wrote his name as Joshy, C.A., Chalayil House, Trivandrum and has also mentioned in the said register that the purpose of visit is to attend an interview. A receipt was also issued for the receipt of Rs.120/- and the said receipt stands marked as Ex.P.4. and the receipt book is Ex.P.3. P.W.4, the room boy, took the accused and the deceased to room No.59 and after getting tea for them, left the room. P.W.1 also saw the accused and the deceased leaving the room and returning at about 8.30 p.m. On return, they entered the room and locked it from inside. P.W.4 went away in connection with his other duties. At about 9.00 or 9.30 p.m. on 22.3.94, P.W.4 went home after handing over charge to P.W.1 and returned on the morning of 23.3.94. He found room No.59 locked from outside and when questioned, P.W.1 told him that the persons, who were occupying the room, would have gone out. P.W.4 did not bother to verify. On 24.3.94, as usual, he came and joined duty and purchased coffee and tea for the occupants in the lodge. At about 8.30 a.m., he went to the annexe building, where room No.59 was situate and found the room locked from outside. He noticed a foul smell emanating from the said room and therefore, informed P.W.1 and at that time, P.W.3, the Assistant Manager of the lodge, was also present. They went near the room and felt the foul smell and therefore, sent information to Venkatachalam, the owner of the lodge. After the arrival of the owner Venkatachalam, a complaint, Ex.P.5 , was drafted by P.W.3 and the same was taken to the police station at Kattoor, where it was handed over to P.W.16, the Sub-Inspector. P.W.16, on receipt of the complaint, Ex.P.5, registered a case in Crime No.828 of 1994 under Section 174 Cr.P.C. by preparing express reports. Ex.P.44 is a copy of the printed first information report. The express reports were sent to the Court as well as to the higher officials. On receipt of the intimation, P.W.18, the

Inspector of Police, reached the police station, where he obtained a copy of the printed first information report. He left for the scene of occurrence after requisitioning the services of the sniffer dog, the finger print experts and others. On reaching the scene of occurrence with his police party, he found the room locked from outside and therefore, broke open the door and entered the room and inside the room, he found a girl lying dead on the cot and a hand bag was seen by the side. There were also a tiffin box, M.O.11 and an yellow polythene bag, M.O.27. In the presence of witnesses, he prepared an observation mahazar, Ex.P.19 . He also drew a rough sketch, Ex.P.45. The scene of occurrence was caused to be photographed and M.O.46 series are the photographs and M.O.47 series are the negatives. He searched the place. In the hand bag, he found a certificate issued by the University and other certificates. He also found a purse containing the name of Puthur Jewellery. A sum of Rs.111/- and coins to the tune of Rs.8.55 were also seen in the bag and the officer, from the certificates, came to know that the girl, who is lying dead, hails from Tirussur. He asked P.W.17, the Sub-Inspector, to go over to Tirussur to make enquiries. Thereafter, P.W.18 conducted inquest over the dead body of the girl between noon and 3.45 p.m. in the presence of panchayatdars and at the time of inquest, he examined P.Ws.1 to 4 and others. Ex.P.46 is the inquest report. He seized the jewellery, which were on the body of the deceased, under a mahazar, Ex.P.20, attested by witnesses. After the inquest, a requisition, Ex.P.15, was sent to the doctor for conducting autopsy.

3. On receipt of the requisition, P.W.11, the Tutor in Forensic Medicine, Coimbatore Medical College Hospital, Coimbatore, conducted autopsy on the body of the female aged about 23 years and found the following:-

"Body bloated. Post-mortem blebs seen on the front of the chest, abdomen & right upper limb. Face bloated. Tongue & eye balls protruded. Cornea collapsed. There was petecheal haemorrhages in the sclera of both eyes. Scalp hair easily peelable. Post-mortem peeling of the skin noticed in the whole of left upper limb and was discoloured. Face blackened. Skin over the rest of the body was easily peelable. Marbling was present in both thighs. Finger nails bluish. Blood stained frothy decomposition fluid seen discharging from the nostrils & vagina.
1. Diffuse contusion with black discolouration of the skin noticed over the back of middle of the trunk 10 x 12 cm. C/s. revealed subcutaneous bruising.
2. Contusion 9 x 6 cm. in the midline of the back of the abdomen in the region of both loins. C/s. revealed subcutaneous bruising.
3. There was an oblique incomplete abrasion seen around the upper part of the neck over an area 28 x 1.5 cm. encircling the neck, and it resembles a ligature mark. The point of suspension is made out in the region behind & below the right ear. The skin was adherent to the subcutaneous plane and was not easily peelable. It was parchment like c/s was pale. Bloodless dissection of the neck revealed nul injury to the soft tissues underneath the ligature mark. Hyoid bone and larynx were intact. Trachea, mucus shows evidence of post-mortem staining. Trachea contained blood stained frothy

fluid.
4. Circular abrasion 6 x 4 cm. surrounded by contusion seen on the left cheek. It was reddish black in colour. Injuries are ante-mortem. Hypostatic post-mortem lividity seen along the left lateral aspect of chest, abdomen & left thigh & left upper limbs. Left upper discoloured & was blackish red in colour."

The doctor issued Ex.P.16, the post-mortem certificate and Ex.P.18, the final opinion, opining that the post-mortem findings are not inconsistent with death due to asphyxia as a result of hanging.

4. In the meantime, P.W.17, who was deputed to Tirussur for the purpose of investigation by P.W.18, went to the house of the deceased and the hand book maintained by the deceased containing her hand writing and signature was seized under a mahazar, Ex.P.10, after it was produced by P.W.7. He also seized M.Os.24 and 26, the two group photographs under the said mahazar. He seized some documents from Prompt Printers. He questioned witnesses and recorded their statements. He went to the Office of the Sub Registrar on 25.3.94 and after giving a requisition, obtained a copy of the certificate showing the registration of the marriage of the deceased with the accused on 19.3.94. The Registrar issued Ex.P.6, the copy and on perusing the same, he found that the annulment of the marriage was also registered under Ex.P.7. He questioned the Sub Registrar and recorded his statement. At Tirussur bus stand, he questioned some witnesses, where he was given a passport size photograph of the accused. After completing his investigation at Tirussur, he returned to Kattoor police station on 26.3.94 and handed over all the documents to P.W.18. In the meantime, P.W.18 , continuing with his investigation, seized M.Os.1, 7 to 23, 25, 27, 28, 33 to 40, which were lying at the scene of occurrence, under a mahazar Ex.P.21 attested by witnesses. He questioned witnesses and recorded their statements. At 8.30 a.m. on 25.3.94, he went to Coimbatore Medical College Hospital, where he found P.W.7, the father of the deceased and others. P.W.7 identified the dead body as the body of his daughter. He questioned Jose, who was present along with P.W.7 and recorded his statement. He perused all the statements of the witnesses recorded by P.W.17 and also the certificates and other documents seized by him. He questioned witnesses and recorded their statements. He also made arrangements to obtain the finger prints of the employees of the lodge. On 29.3.94, the post-mortem certificate was received by the officer and on receipt of the same, he came to know that Shali has suffered injuries due to violence. He, thereafter, altered the crime to one under Section 302 I.P.C. by preparing express reports. Ex.P.47 is the express report. He searched for the accused and sent a police constable to Tiruvananthapuram, who returned later and informed him that the accused is not available. All the documents were sent to Court. The material objects seized from the scene of occurrence were sent to Court with a request to forward them for analysis. Ex.P.2, the entries in the Check-in Register, Ex.P.1, were sent to the hand writing expert, who gave Ex.P.43, his opinion, stating that it is not possible to offer any reliable opinion by comparing the admitted signatures and handwritings of the accused with the disputed hand writing and signature found in Ex.P.2. P.W.18, on account of his illness, was admitted as in-patient and was at K.G.Hospital between 28.4.94 and 7.5.94 and after his discharge, he

searched for the accused and came to know that the accused has surrendered before the Judicial Magistrate No.2, Kovai, on 3.5.94. He gave a requisition to the Court to take the accused into custody for the purpose of questioning him. He also gave a requisition to the Court for conducting the Test Identification Parade. On receipt of the requisition, P.W.10, the Judicial Magistrate conducted Test Identification Parade on 17.5.94 and at the Parade, P.Ws.1, 4, 6 and another witness correctly identified the accused. Ex.P.14 are the proceedings drafted by the said Magistrate regarding the Test Identification Parade conducted by him. On the orders of the Court, the accused was handed over to the police and at 5.00 p.m. on 17.5.94, he was brought to the police station and was questioned in the presence of witnesses. He gave a statement and the admissible portion is Ex.P.22. In pursuance of the admissible portion, Ex.P.22, the accused took the police party to the motor pump shed room at the lodge and on the way to the second floor, pointed the switch board for motor starter, from where M.O.41, the key, was recovered under a mahazar, Ex.P.23, attested by P.W.13. The accused, thereafter, took the police party and pointed the shop of P.W.6, whose statement was recorded. He also pointed P.W.9 and the officer questioned him and recorded his statement. When P.W.6 was questioned, he produced a bill book, Ex.P.8, which was seized under a mahazar. On 29.7.94, P.W.18 was promoted and therefore, further investigation was taken up by his successor, P.W.19. P.W.19, on taking up investigation, sent some of the documents to the hand writing expert to compare them with the admitted hand writing of the accused and after obtaining the reports, filed the final report against the accused on 13.12.94 under Sections 302 and 201 I.P.C.

5. The accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him and he denied all the circumstances and examined D.W.1 on his side.

6. D.W.1, in his evidence, stated that Josie is a friend of the deceased Shali and Josie hails from Trivandrum. He has further stated that the said Josie was introduced to him by Shali and according to him, the accused and the deceased registered their marriage on 19.3.94 at the Office of the Sub Registrar, Tirussur. He has further stated that on 22.3.94, he produced a document before the Sub Registrar indicating the annulment of the marriage and that he has signed as one of the witnesses. He has marked Ex.P.7, the registered marriage annulment certificate issued by the Sub Registrar. According to him that after the marriage was annulled and when he was about to leave the Office of the Sub Registrar, Shali informed him that she intends visiting Coimbatore, Ooty and other places along with her friend Josie and that she was very much disappointed with the annulment of the marriage and that she needs peace of mind. In short, the accused has examined D.W.1 to show that the deceased left Tirussur in the company of Josie on account of the annulment of the marriage and it is for Josie to explain the circumstances under which Shali met her end.

7. The prosecution, to establish that the accused has murdered Shali, relied upon circumstantial evidence since the occurrence was not witnessed by any one. It is the settled principle of law that where there is no eye-witness to the murder and the case against the accused depends

entirely on circumstantial evidence, the standard of proof required to convict the accused on such evidence is that the circumstances relied upon must be fully established and the chain of evidence furnished by these circumstances should be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain vide DEONANDAN MISHRA -vs- STATE OF BIHAR (A.I.R. 1955 S.C. 801).

8. Keeping the above principle in mind, we will now analyse the evidence to find out whether the prosecution has succeeded in establishing all the links in the chain of circumstances.

9. It is not in dispute that the dead body that was found in room No.59 of Chitra Lodge at Coimbatore is the body of the deceased Shali. P.W.7, the father of the deceased, in his evidence, stated that on the morning of 22.3.94, Shali left the house for her job at Prompt Printers and that when she left the house, she had M.O.11, a tiffin box and other articles. She did not return home and finding that his daughter has not returned home, he went to Prompt Printers, where he came to know that Shali did not come to the press on that day. The said information was given to him by the brother of the accused. Thereafter, he and his sister's son, Rose went to the house of the accused and made enquiries. The parents of the accused, who were present, informed him that if Suresh, the friend of the accused, is enquired, they will be able to get the information as to the whereabouts of the accused and the deceased and therefore, P.W.7 went to the house of Suresh, which was at a distance of 2 kms. from the house of the accused. When P.W.7 questioned Suresh, he informed that the accused and the deceased have married each other and the marriage was also registered at the Office of the Sub Registrar on 19.3.94 and that the accused and the deceased have left Tirussur at about 11.00 a.m. in a bus for Shoranur after informing him that they are going to Bangalore via Shoranur. On getting this information, P.W.7 made arrangements to contact his son Sandosi, who was at Bangalore and wanted him to detain the deceased and the accused as soon as they alight at the railway station. He also left for Bangalore accompanied by the father of the accused and Rose and reached Bangalore at about 9.00 a.m. on 23.3.94. At Bangalore, they searched for the accused and the deceased and the son of P.W.7 informed him that the accused and the deceased did not come to Bangalore by train. According to P.W.7, they could not trace either the accused or the deceased and therefore, returned to Tirussur at about 11.00 a.m. on 24.3.94 and at 6.00 p.m., the police officers from Coimbatore came to him and gave him the information about the death of his daughter at the lodge in Coimbatore. The evidence of P.W.7, therefore, shows that the deceased, who left the house on the morning of

22.3.94, was not seen alive thereafter by P.W.7 and her dead body was found on the morning of 24.3.94 after P.W.18, the investigating officer, went and broke open the door. P.W.7, on reaching the lodge and after looking at the dead body, which was kept in the mortuary, identified the body as that of his daughter not only from the physical features, but also from the clothes and the other jewellery, which the deceased was wearing. Therefore, there can be no doubt in the mind of the Court that the dead body, which was found in room No.59 at Chitra lodge is that of Shali and the said fact is also not disputed by the defence.

10. The next question that is to be decided by this Court is whether Shali died a natural death or was murdered. Even at the outset we may say that the materials placed before this Court do not indicate that Shali died a natural death. It is the evidence of P.W.1, the receptionist at the lodge and P.W.4, who was working as a room boy in the said lodge, that at 6.30 p.m. on 22.3.94, a male and a female came to the reception room and that the male wanted a room to be allotted after intimating the receptionist, P.W.1, that they had to stay overnight as his wife is to attend an interview on the next day and P.W.1 , thereafter, allotted room No.59 to the two persons, who told him that they are husband and wife. Ex.P.2 is the entry in Ex.P.1, the check-in register and according to P.W.1, the said entry was made by the accused in his presence and that the accused has also put his signature. A perusal of Ex.P.2 shows that the accused had given his name and address as Joshy, C.A., Chalayil House, Trivandrum and that the purpose of visit is for the interview. It is the evidence of P.W.1 that he demanded a sum of Rs.120/- from the accused and that the said amount was paid, for which a receipt was also issued. The carbon copy of the said receipt is Ex.P.4. According to P.W.4, the room boy, the accused and the deceased were taken to room No.59 and after supplying them tea, he left the room. He has further stated that he saw the accused and the deceased leaving the room and returning at about 8.30 p.m., who after entering the room, locked it from inside. P.W.4 has further stated that on the next day, he found the room locked from outside and was under the impression that the occupants of the room must have left on their business and therefore, did not give any importance to the said fact. On 24.3.94, when he came for his duty, he found the room locked from outside and noticed a foul smell emanating from the room. Therefore, he went and informed P.W.1. P.W.1, thereafter, informed the owner, who, on arriving at the lodge, advised P.W.3, who was also present, to lay a complaint and later, a complaint, Ex. P.5, was drafted by P.W.3 and the same was handed over to P.W.16, the Sub-Inspector, on which, the crime came to be registered. P.W.18, on taking up investigation in the crime, reached the lodge and found the room locked from outside and therefore, he had to break open the lock to enter into the room. On entering the room, he found a girl lying dead on the cot and also noticed several features in the said room. He prepared an observation mahazar, Ex.P.19. He also found a suicide note lying by the side of the dead body and the same stands marked as M.O.19. The officer also found M.O.20, a letter alleged to have been written by Josie. Thereafter, the body was sent for postmortem. P.W.11 conducted post-mortem on the dead body of Shali and issued Ex.P.16, the post-mortem certificate as well as Ex.P.18, the final opinion opining that the post-mortem findings are not inconsistent with death due to asphyxia as a result of hanging. In the said postmortem certificate,

he has stated that the injuries are ante-mortem in nature and when examined in Court, he has admitted in chief examination itself that he cannot deny that the deceased would have been made unconscious by smothering and thereafter, her body would have been hanged. He has also stated that he had given an opinion to the effect that Shali would have been hanged to death. He has also admitted that the injuries, which he noticed on the dead body, could have been on account of some one smothering her for causing asphyxia and unconsciousness and that thereafter, the body would have been hanged from the ceiling. He went on to admit that injuries 1, 2 and 4 could have been on account of violent beating of the deceased. Though in crossexamination he has stated that he is not able to give any definite opinion as to the cause of death because he did not find any internal injuries, this Court, from the physical features noticed by the investigating officer and also from the injuries noticed by the doctor and noted in the post-mortem certificate, Ex.P.16, can safely come to the conclusion that Shali died not a natural death but met her end on account of homicidal violence and this conclusion of ours is on the basis of the materials collected and placed before the Court. It is the evidence of P.W.4, the room boy, that on 24.3.94, when he returned for duty at the lodge, he found room No.59 locked from outside. He noticed foul smell emanating from the room and therefore, informed P.W.1 and a complaint came to be laid thereafter. P.W.18, on taking up investigation, reached the lodge and found the room locked from outside. This evidence of P.W.18 fully corroborates the evidence of P.W.4 that the door was locked from outside. The officer had to break open the door to gain entry. On entering the room after breaking open the door, he found the dead body of Shali on a cot. He also noticed M.O.1 9, a suicide note, and a saree, which was found hanging from the ceiling. If it is a case of suicide, then it is impossible for the dead body to have walked out of the room to lock it from outside and then get back to lie on the bed. It is, of course, true that the suicide note, M.O.19, was not sent for hand writing expert and from this alone, the prosecution case cannot be rejected. If the suicide note was written by the deceased, then there is no explanation as to how the room was found locked from outside. The evidence of P.W.4 that on 22.3.94, the room was found locked and that even on 24.3.94, when he returned duty, the room was locked from outside indicate that after the deceased entered the room at about 8.30 p.m. along with the accused on 22.3.94, she was not seen alive thereafter by any one and her dead body was seen inside the room, which was locked from outside. It is also not possible for this Court to hold that the deceased committed suicide by hanging herself with the help of th e saree. If the deceased had committed suicide by hanging herself with the saree, then there is no explanation as to how the dead body came to be seen on the cot when the investigating officer entered the room. The saree, which was seen hanging inside the room and the fact that the room was locked from outside coupled with the suicide note seen at the place of occurrence, therefore, indicate that the deceased Shali must have been hanged after she was made unconscious due to smothering or otherwise, the room could not have been found locked from outside and the suicide note, M.O.19, was left at the scene of occurrence only to deflect the course of investigation and make it appear, as if, it is a case of suicide. We, therefore, reject the defence theory that the deceased committed suicide.

11. The next question that is to be decided by us is whether

the accused is responsible for the death of Shali and for this, the prosecution relied upon the evidence of P.Ws.1 to 4, 6 and 9. As we stated earlier, P.W.1 is the receptionist and according to him, at about 6.30 p.m. on 22.3.94, the accused accompanied by the deceased came to his lodge and asked for a room after telling him that they are husband and wife and that the accused has also told him that his wife had to attend an interview on the next day and thereafter, a room was allotted to them. It is the further evidence of P.W.1 that the accused made an entry, Ex.P.2, in the check-in register, Ex.P.1, by giving his name as Joshy, C.A. at Chalayil House, Trivandrum and that he made those entries in his presence. P.W.2, who was present at the lodge at that time, also corroborates the evidence of P.W.1 that the accused along with the deceased entered the lodge and asked for a room. It is the evidence of P.W.4, the room boy, that it was he, who took the accused and the deceased to room No.59, where, after getting them tea, he went away. The deceased was not seen alive by any one thereafter and her dead body was seen by the investigating officer after the room was broken open. The prosecution before the trial Court, to establish that the person, who checked in with the deceased, is the accused, relied upon the evidence of P.W.1, who has stated that on 27.3.94, a photograph was shown to him by the investigating officer and that he identified the person in the photograph as the person, who checked into the room with the deceased. The learned counsel appearing for the appellant-accused strenuously contends that since the photograph of the accused was shown to the witness, P.W.1, on 27.3.94, the subsequent identification parade conducted by the Judicial Magistrate, P.W.10, has no value and that the evidence of P.W.1 also cannot be safely accepted to hold that the accused was in the company of the deceased when they entered the room since the photograph that was shown to him was a photograph of an individual and the witness had no chance of identifying a person from a group of persons in a photograph. It is, of course, true that to P.W.1, the officer had shown a photograph and the witness has identified the person in the photograph as the person, who checked into the room along with the deceased. But this by itself, in our view, will not affect the prosecution version. It is to be remembered that the accused went to the lodge on 22.3.94 and within five days thereafter, a photograph was shown to the witness and from the said photograph, he informed the police officer that the person found in the photograph is the person, who checked into the room along with the deceased. Even if it is to be held that the subsequent identification parade may not have much value in view of the admission of P.W.1 that a photograph was shown to him earlier, the fact remains that on the fifth day, the investigating officer was able to fix the identity of the accused and showed the photograph to the witness and the witness was able to identify the person in the photograph as the person, who checked into the room along with the deceased. In this background, we have to consider the evidence of P.W.4, whose evidence clinchingly establishes the complicity of the accused with the crime. He has stated in his evidence that it was he, who took the deceased and the accused and left them in the room and it was he, who purchased tea for them. According to him, the room was found locked for about two days and on the morning on 24.3.94, he noticed a foul smell emanating and therefore, informed P.W.1. According to him, on 27.3.94 during the course of investigation, the officer showed him a group photograph and in the group photograph, he pointed the person, who is the accused in the case, as the one who checked into the

room along with the deceased. P.W.4 was not shown the photograph of the accused alone, but what was shown to him was M.O.26, a group photograph, wherein along with other persons, the accused is also found. This photograph, M.O.26, was seized from the house of the deceased and the authenticity of M.O.26 was not questioned by the defence before the trial Court. The defence was satisfied by making a simple suggestion to P.W.4 that M.O.26 was not shown to him on 27.3.94 and except for the said suggestion, the defence did not elicit any answer to show that on 27.3.94, a group photograph, M.O.26, wherein the accused is also found, was not shown to P.W.4. The above evidence of P.W.4, therefore, clearly establishes that on 27.3.94, a group photograph was shown to him and that he was able to identify the accused, who was found in the group, as the person, who checked into the room along with the deceased. It is, of course, true that P.W.18, in his evidence, stated that he had also shown a passport size photograph to P.Ws.1, 4, 6 and others on 27.3.94 and that they were questioned and from this, it cannot be said that the said photograph was shown for the purpose of identification. The evidence of P.W.4 read in the background of the evidence of P.W.18 clearly indicates that for the purpose of identification, M.O.26 was shown to P.W.4 and he identified the accused from the group photograph and he was also shown the other photograph of the accused when he was questioned and therefore, it cannot be said that the identification of the accused from the photograph is doubtful. The fact remains, as we stated earlier, that the officer was able to fix the identity of the accused even on 27.3.94, which was confirmed not only by P.W.1, but also by P.W.4.

12. It is to be remembered at this stage that when P.W.7 went to the printing press, he did not find the accused. He did not also find him in his house; but on the contrary, his enquiries revealed that the deceased left along with the accused to Bangalore and therefore, he made arrangements through his son to detain the accused and the deceased at Bangalore. He also went to Bangalore accompanied by the father of the accused, but could not find either the accused or the deceased and perforce, had to return to Tirussur on 24.3.94. On the evening of 24.3.94, he came to know that his daughter is lying dead in a lodge and therefore, went to Coimbatore and identified the body at the hospital. Under the above circumstances, it is for the accused to explain as to where he was during the said relevant period. He did not offer any explanation; on the contrary, he had come out with a false explanation by examining D.W.1 to make it appear as if that the deceased Shali went along with Josie to Coimbatore, Ooty and other places. This defence was probably taken by the accused in view of the letter, M.O.20, which was found at the scene of occurrence. A perusal of the letter, M.O.20, clearly indicates that the said letter could not have been written by a male; but on the contrary, it must have been written only by a girl friend of the deceased since in the said letter, the said Josie has made enquiries with the deceased as to whether she is still wearing churidhars or whether she has changed her dress to saree. She has stated in the said letter that she has started wearing sarees and she is no longer wearing churidhar. She has also made enquiries about the other girl friends of their group. If the letter was written by a male, then it escapes one's comprehension as to why the said Josie should wear sarees and why he should make enquiries about the dress of the deceased. The recitals found in M.O.20, therefore, clearly show that the said letter was written not

by a male, but by a girl friend of the deceased and the accused, misdirecting himself on the recitals found in M.O.20, examined D.W.1 to make it appear that Josie is a male and that the deceased left in his company. It is, of course, true that the investigating officer has deputed a police constable to make enquiries about Josie and according to the officer, a report was also submitted by the said constable, but the said report was not produced in Court. This Court, from the above nonproduction of the report of the police constable, cannot come to the conclusion that the deceased left in the company of Josie in view of the discussions, which we have made above. If there had been a person by name Josie and the deceased has left in his company, then nothing prevented the accused from marking the voters list to establish his theory that the deceased left in the company of Josie and in our view, the said defence was probably prompted in view of Ex.P.2, the entries in Ex.P.1, the Check-in register and Ex.P.20. On the contrary, the evidence shows that the entries in Ex.P.2 and the evidence of D.W.1 that the deceased left along with Josie is a false statement and the false statement is an additional link in the chain of circumstances against the accused as held by the Supreme Court in DEONANDAN MISHRA -vs- STATE OF BIHAR (A.I.R. 1955 S.C. 801). In JOSEPH VERSUS STATE OF KERALA [2000 SCC (Cri) 926], the Supreme Court has held that the accused, instead of making at least an attempt to explain or clarify the incriminating circumstances inculpating him and connecting him with the crime, by his adamant attitude of total denial of everything, when they were brought to his notice by the Court, only produces the missing link to connect him with the crime and the blunt and outright denial of every one and all of the incriminating circumstances pointed out connect the accused with the death of the deceased.

13. In this background, we have to take into consideration the evidence of P.W.6, the person from whom, according to the prosecution, the accused and the deceased purchased nighties and lungi. P.W.6 was pointed by the accused after his arrest. P.W.6 has, in his evidence, identified M.O.27, the yellow polythene bag, and according to him, he used to give similar bags to his customers. He has also identified Ex.P.9 as the counterfoil of the bill issued by him indicating the sale of night clothes and the Court cannot loose sight of the fact that M.O.27 was seized by P.W.18, after he entered the sealed room. Though pointing out a person by the accused may not attract the provisions of Section 27 of the Evidence Act, still it is admissible under Section 8 of the Evidence Act as to the conduct of the accused. In Prakash Chand vs. State (Delhi Admn.), (1979 M.L.J.(Cri) 419), the Supreme Court has held as follows:-

" There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which is hit by Section 162, Criminal Procedure Code. What is excluded by Section 162, Criminal Procedure Code, is the statement made to a Police Officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police

Officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act (vide Himachal Pradesh Administration v. Om Prakash [(1972) 1 S.C.J.691])."

P.W.6 has also identified the accused in the Test Identification Parade. It is, of course, true that the photograph was shown to him also on an earlier occasion during the course of investigation. But, this, in our view, does not affect the substratum of the prosecution version that the deceased was in the company of the accused and was seen by P.W.6, who sold, certain clothes under the bill, Ex.P.9, on 22.3.94. Similarly, P.W.9 was examined to say that a rope was purchased by the accused on the night of 22.3.94 and though the materials do not show that the rope was used to cause the death of the deceased, the fact remains that the accused and the deceased were seen together by P.W.9 on the night of 22.3.94 and under the above circumstances, it is for the accused to explain as to what happened to the deceased. He has no explanation; on the contrary, the dead body of Shali was found inside the room, which was found locked from outside. We, at this stage, state that we have not placed much reliance upon the recovery of M.O.41, the key, which, according to the prosecution, was seized in view of the evidence of P.W.4 that the keys maintained at the lodge will have an emblem of the lodge and also a token and M.O.41 does not contain any of these. In any event, the place from where M.O.41 was recovered is a place frequented by everyone as it was on the way to the second floor of the lodge and near the motor pump switch room. But that by itself will not be a reason for us to hold that the accused did not commit the offence as alleged by the prosecution in view of the other overwhelming evidence, which we discussed above.

14. On the materials, we find that the learned trial Judge was justified in convicting and sentencing the appellant-accused and we find no reason to interfere with the same. The appeal is, therefore, dismissed.

Index: Yes
Website: Yes

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To

1.The Principal Sessions Judge, Coimbatore
2.The Judicial Magistrate No.5, Coimbatore.
3.-do- Thro' The Chief Judicial Magistrate, Coimbatore.
4.The Inspector of Police, Kattoor Police Station, Coimbatore.
5.The District Collector, Coimbatore District.
6.The Director of General of Police, Madras-4.
7.The Superintendent, Central Prison, Coimbatore.
8.The Public Prosecutor, High Court, Madras.